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THE Supreme Court of the United States, in *Williams* v. *Wingo* (20 Sup. Ct. 793), affirms the ruling of the Virginia Court of Appeals on the question whether a ferry license granted by the County Court, under Act of March 5, 1840 (Virginia Code of 1887, sec. 1386), which forbids the granting of a license for one ferry within a half mile of another ferry, constitutes a contract, the obligation of which is impaired by Act of March 5, 1894, authorizing the establishment of a ferry within the prohibited limit. The Virginia Court of Appeals held that the former Act did not constitute a contract with owners of ferries established under it, and this decision is approved on appeal to the Supreme Court of the United States. The case is an excellent illustration of the principle that no man has a vested right in a mere rule of law.

THE opinion in *Roehm* v. *Horst*, 20 Sup. Ct. 780, by Mr. Chief Justice Fuller, contains a masterly discussion of the mooted doctrine of anticipatory breach of contracts. The defendant had entered into a contract to purchase of the plaintiff, during a series of years, a certain quantity of hops, to be delivered in installments, of stipulated quantities at stated periods. The defendant subsequently repudiated the contract, and absolutely refused to receive delivery of any installment.

The court followed the English rule, of which *Hochster* v. *De la Tour*, 2 El. & Bl. 678, is the leading exponent, and which generally prevails in America, that the plaintiff in such case need not await the expiration of the stipulated period, but may consider the breach of the contract as complete, and sue for entire damages. The opinion contains a full review of the English decisions, with a citation of numerous American authorities.

The leading case in opposition is *Daniels* v. *Newton*, 114 Mass. 530,

19 Am. Rep. 384, followed in a strong opinion by the Supreme Court of North Dakota, in *Stanford* v. *McGill*, 6 N. D. 536, 38 L. R. A. 760, 72 N. W. 938. One of the grounds upon which these cases rest is, that such a principle leads to the necessary result that the maturity of promissory notes and other commercial paper would be anticipated by renunciation of the promise in advance of maturity. It is generally agreed, however, that the rule does not apply to ordinary promises to pay money, since here the consideration has passed, the contract is executed on one side, and there is, therefore, no mutuality of obligation.

The other proposition upon which the adverse authorities rest is, that the recalcitrant party may change his mind before the maturity of the contract, during which interval there is a *locus penitentiae*, pending which no damages can be suffered by the other party. As said by Wells, J., in *Daniels* v. *Newton*, "An executory contract ordinarily confers no title or interest in the subject matter of the agreement. Until the time arrives when by the terms of the agreement he is or might be entitled to its performance, he can suffer no injury or deprivation which can form a ground of damages. There is neither violation of rights nor loss upon which to found an action." The court in the principal case answers this contention most satisfactorily, as shown in an extract from the opinion published elsewhere. (See "Notes of Cases" *post*).

The doctrine of the principal case was approved in a *dictum* in *Burke* v. *Shaver*, 92 Va. 345, 352, and apparently governed the decision in *James* v. *Kibler*, 94 Va. 165. It was also recognized *obiter* in *Lee* v. *Mutual etc. Life Assoc'n*, 97 Va. 160, and received practical application in *Travellers Ins. Co.* v. *Harvey*, 82 Va. 949, under the theory of waiver of the term of the contract fixing a future date for performance.

A corollary of this doctrine is, that where one party to a contract notifies the other that he will not perform his part of it, the other has no right to thereafter proceed with the execution of the agreement, and thus enhance the damages, but his remedy is to sue for the damages accrued by reason of the breach at that stage of the transaction. *Clark* v. *Marsiglia*, 1 Denio, 317, 43 Am. Dec. 670; *Davis* v. *Bronson*, 2 N. D. 300, 33 Am. St. Rep. 783, and monographic note; 1 Bishop on Contracts, 839. It is interesting to note that in *Ferguson* v. *Wills*, 88 Va. 136, this principle seems to have been regarded by the court as too novel for serious consideration. In

that case Ferguson made a contract with Wills to erect a church building, and died before the work was begun. Shortly after the inception of the work, Ferguson's administrator served notice on Wills not to proceed further with it, and that the estate of his decedent would not be responsible for any payment under the contract. Wills disregarded the notice, completed the building, and sued the administrator for the contract price. It was held that he was entitled to recover the contract price in full. The court saying: "That the obligation of the contract was not affected by the notice served by the administrator on the plaintiff above mentioned, is too plain for discussion. If it was, then all that a party to a contract has to do, who wishes to rid himself of its obligation, is to notify the other party not to perform his part of it, and the contract is at an end But such a proposition is not sanctioned by any principle, either of law or justice, and connot be seriously contended for." It is evident from this strong language, that the court had not examined the authorities (none are cited), and the probabilities are that the case will not be followed, when the question again arises.